

ORDERED.

Dated: May 28, 2021



Catherine Peek McEwen  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
www.flmb.uscourts.gov

In re:

Case No. 8:21-bk-00206-CPM

Scott Jerold Bitman,

Chapter 13

Debtor.

**ORDER CLARIFYING COMMENCEMENT  
OF CASE AND EFFECT OF AUTOMATIC STAY**

THIS CASE came on for consideration on the Court's own motion to consider entry of an appropriate order. The Debtor filed this case on January 20, 2021, and subsequently initiated an adversary proceeding<sup>1</sup> against Donald Aze Culbertson. According to the complaint filed in the adversary proceeding (the "AP Complaint"), the Debtor is a defendant in a state court foreclosure action (the "State Court Case")<sup>2</sup> filed against him and others by Donald Aze Culbertson, Trustee for Donald Aze Culbertson, Living Trust UDT 12/29/2010 ("Culbertson").

<sup>1</sup> *Bitman v. Donald Aze Culbertson*, Adv. Proc. No. 8:21-ap-00061-CPM.

<sup>2</sup> *Donald Aze Culbertson, Trustee for Donald Aze Culbertson, Living Trust UDT 12/29/2010 v. YHH, LLC and Scott Bitman, Individually, and the City of Clearwater*, Case No. 17-000883-CI, in the Circuit Court for the Sixth Judicial Circuit, in and for Pinellas County, Florida.

The foreclosure sale in the State Court Case was held and the Certificate of Sale (“COS”) filed on January 20, 2021, the same day the Debtor filed this bankruptcy case. The question central to determining the parties’ rights concerning the real property sold (the “Subject Property”) is: At what time, exactly, was the Debtor’s bankruptcy case commenced relative to when the COS was filed? And a corollary question is: What effect did the commencement of this bankruptcy case have on all actions taken thereafter in the State Court Case? As to the first question, it appears that Culbertson got the timing issue wrong, perhaps because he misapprehended the meaning of the Notice of Bankruptcy Case Filing (the “Bankruptcy Notice”) issued by the Court. As to the second question, all such action is void because the filing of the bankruptcy case triggered the automatic stay.

#### Time of the Commencement of the Bankruptcy Case Relative to the Filing of the COS

The AP Complaint alleges fraud and seeks both monetary damages and injunctive relief. It relies upon exhibits attached thereto, which include what purports to be a copy of Culbertson’s response (the “Response”)<sup>3</sup> to the Debtor’s motion filed in the State Court Case to set aside the foreclosure sale. In the Response, Culbertson represented that (i) the COS was received by the law office representing Culbertson on January 20, 2021, at 10:50 a.m.,<sup>4</sup> and (ii) the Debtor’s bankruptcy case “was filed under Chapter 13 . . . and *entered* on 11:14 AM.”<sup>5</sup> Relying on this

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<sup>3</sup> Exhibit B to AP Complaint (“Exhibit B”) (Doc. No. 1).

<sup>4</sup> The Response states that Culbertson’s counsel received an email at 10:50 a.m. on January 20, 2021, with the COS attached. *Id.* However, that email, a copy of which is attached to the Response, shows that it was sent at 10:59 a.m. *Id.* In any event, this nine-minute time difference is not significant for purposes of this opinion.

<sup>5</sup> *Id.* (emphasis added). The *filing* date and time on the Bankruptcy Notice, a copy of which is attached to the Response, is partially obscured by the Court’s seal. *Id.* However, anyone can access PACER (Public Access to Court Electronic Records) and review individual docket entries on any federal court docket. Thus, Culbertson could have viewed the Debtor’s bankruptcy petition, as filed, and seen the time stamp on it. He could also have clicked the “gray ball” next to the docket entry for the petition and seen the Notice of Bankruptcy Case Filing that shows the Debtor’s petition was “entered on 1/20/21 at 11:14 AM EST and filed on 1/20/2021 at 10:27 AM EST.” Nonetheless, the Court apologizes for any confusion

time line, the Response asked the judge in the State Court Case to deny the motion to set aside the sale because “[the Debtor] cannot stay or set aside the foreclosure sale in this case via a *post-sale* Chapter 13 bankruptcy filing.”<sup>6</sup>

Culbertson’s representation that the Debtor’s bankruptcy petition was *entered* at 11:14 a.m. on the morning of the sale is accurate. This representation is irrelevant, however, because the time a bankruptcy case is entered on the docket is of no significance, except to reflect the time the petition became accessible by the public. The key point in time is when a bankruptcy case is *filed*. And the time stamp on the Debtor’s bankruptcy petition shows that he filed it on January 20, 2021, at 10:27 a.m.,<sup>7</sup> meaning the filing was actually *prior* to receipt of the COS via email by Culbertson’s counsel.<sup>8</sup>

#### Effect of Commencement of the Bankruptcy Case on the State Court Case

The time the Debtor filed his bankruptcy petition is key because a voluntary bankruptcy case is “commenced by the *filing*” of a petition with the bankruptcy court,<sup>9</sup> and the commencement of a case creates a bankruptcy estate consisting of, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case,” with certain

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caused by the formatting of the Bankruptcy Notice, which should place the date and time of *filing* in a more legible position.

<sup>6</sup> Exhibit B (emphasis added). This statement misstates the law with respect to the automatic stay, as discussed more fully below. *See infra* note 13 and text at pp. 5-6.

<sup>7</sup> The manually applied time stamp actually shows the time filed as “PM 10:27.” However, that error was corrected by a Notice to Creditors and Other Parties in Interest (Doc. No. 41), which explains that the time stamp should have reflected the time filed as “AM 10:27.” (This scrivener’s error was obvious because a case filed after noon on a certain day cannot have been entered on the docket before noon that same day.)

<sup>8</sup> The Court recognizes that the time counsel received the COS via email is not likely the exact same time the COS was filed in the State Court Case. And it is the time that the COS was filed that is critical in determining the parties’ rights in the Subject Property. *See In re Jaar*, 186 B.R. 148, 154 (Bankr. M.D. Fla. 1995) (“A mortgagor’s equity right of redemption now expires [under applicable Florida law] with the filing of the certificate of sale.”). Because the time the COS was filed in the State Court Case does not appear in the AP Complaint, the Response, or elsewhere in the record of this case or the related adversary proceeding, this Court cannot make a determination as to the parties’ rights in the Subject Property.

<sup>9</sup> 11 U.S.C. § 301(a) (emphasis added).

exceptions not applicable here.<sup>10</sup> Thus, all such legal or equitable interests become property of the bankruptcy estate upon the filing of a petition. And under § 362 of the Bankruptcy Code, actions against a debtor or property of the estate become subject to the automatic stay when a petition “is *filed*.”<sup>11</sup> This stay arises to protect against:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.<sup>12</sup>

In other words, the protection afforded to the Debtor as well as all legal or equitable interests that the Debtor had on the petition date, including any possessory interest he had in the Subject Property,<sup>13</sup> arose the instant he filed his bankruptcy petition, regardless of when the petition was entered on the docket.

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<sup>10</sup> 11 U.S.C. § 541(a).

<sup>11</sup> 11 U.S.C. § 362(a) (emphasis added).

<sup>12</sup> *Id.* (subject to certain exceptions as enumerated elsewhere in § 362, which exceptions do not apply here).

<sup>13</sup> See, e.g., *In re Int'l Supply Corp. of Tampa, Inc.*, 72 B.R. 510 (Bankr. M.D. Fla. 1987) (automatic stay applies to interest in property even if it is “nothing more than a possessory interest”).

Consequently, all actions taken in the State Court Case after the time the Debtor filed his bankruptcy petition on January 20, 2021, without the actor's having obtained relief from the automatic stay—including but not limited to issuing and filing the COS (if after 10:27 a.m.), filing the Debtor's motion to set aside the sale, filing the Response, holding the hearing on that motion, issuing the certificate of title, and issuing the writ of possession<sup>14</sup>—violated the stay. Under controlling Eleventh Circuit precedent, all actions taken in violation of the stay are “void and without effect.”<sup>15</sup> Nothing in the record in the Debtor's bankruptcy case indicates that either Culbertson or the Debtor ever sought relief from the automatic stay to proceed in the State Court Case, notwithstanding the Debtor's filing of a Suggestion of Bankruptcy in that case on January 25, 2021.

The primary case Culbertson relied on in his Response, *In re Jaar*, does not support the proposition that a plaintiff in a foreclosure action may proceed without seeking relief from the automatic stay after a defendant files a bankruptcy petition if the certificate of sale was filed before the petition was filed. *Jaar* involved a debtor who filed her bankruptcy petition following the filing of a certificate of sale in a foreclosure action. The creditor filed a motion for stay relief to complete the action. There, the court ruled that when a certificate of sale of the property is filed pre-petition, the debtor loses the ability to cure a default on the mortgage through a chapter

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<sup>14</sup> The Court takes judicial notice of the docket in the State Court Case available online at: <https://ccmspa.pinellascounty.org/PublicAccess/CaseDetail.aspx?CaseID=17530683>. See *Griffin v. Verizon Comm., Inc.*, 746 Fed. App'x 873, 875 (11th Cir. 2018) (“Courts typically take judicial notice of record documents from other judicial proceedings.”) (citations omitted).

<sup>15</sup> *United States of America v. White*, 466 F.3d 1241, 1244 (11th Cir. 2006). See also, e.g., *Heritage Family Pub, Inc. v. First Fed. Savings & Loan Assoc. of Clearwater*, 315 So.2d 558 (Fla. 2d DCA 1975) (foreclosure sale held after debtor filed its bankruptcy petition and without obtaining relief from automatic stay was vacated and certificate of sale cancelled). This inability to proceed without stay relief even extends to a debtor's appeal of rulings in actions originally initiated against debtor. See *Hewett v. Wells Fargo Bank, N.A.*, 197 So. 3d 1105, 1106 (Fla. 2d DCA 2016) (relief from the automatic stay is needed for debtor to appeal foreclosure judgment because it is a continuation of an action against the debtor).

13 plan.<sup>16</sup> For that reason, the court granted stay relief to permit the creditor to continue to enforce its *in rem* remedies against the debtor's residence.<sup>17</sup> Therefore, even if, *arguendo*, the COS in the present case was filed before the Debtor filed his bankruptcy petition, *Jaar* does not support a determination that relief from the automatic stay to continue taking action in the State Court Action was unnecessary.

Accordingly, it is

**ORDERED** that the Court hereby confirms that the automatic stay in this case arose upon the Debtor's filing of his bankruptcy petition at 10:27 a.m. on January 20, 2021, and that any action taken thereafter in the State Court case violated the stay and is, therefore, void and without effect.

The Clerk is directed to serve a copy of this order on the Debtor, interested non-CM/ECF filers, and, for informational purposes only, Robert J. Andringa, Esq., 5315 Park Blvd. N., Suite #2, Pinellas Park, FL 33781, and the Hon. George M. Jirotko, Circuit Court Judge for the Sixth Judicial Circuit in and for Pinellas County, Florida, 315 Court Street, Rm. 421, Clearwater, FL 33756.

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<sup>16</sup> *In re Jaar*, 186 B.R. at 154-55 (for purposes of 11 U.S.C. § 1322(c)(1), a debtor's residence is "sold at a foreclosure sale" when the certificate of sale is filed by the clerk of the state court).

<sup>17</sup> *Id.* at 155.